

LIYANAPATHIRANA AND ANOTHER
v.
PEOPLES BANK AND OTHERS

SUPREME COURT.

FERNANDO, J.

RAMANATHAN, J. AND

PERERA, J.

S.C. APPLICATION NO. 143/91.

SEPTEMBER 09 AND MARCH 11, 1993.

Fundamental Rights – Scheme of Promotion – Differentiation by reference to classes – Article 12(1) of the Constitution.

The petitioners were employees of the first respondent Bank in the clerical grade. On the basis of Staff Circular No. 216/88 certain promotions numbering 228 were made. Later by administration Circular No. 15/90 dated 09.03.90 promotions on ethnic ratios were provided for and on this basis 29 promotions were made. If these 29 employees were promoted on the basis of Circular 216/88 446 employees in all including the two petitioners would have qualified for promotion. But the two petitioners did not have recourse to their legal remedy at that time (although the Supreme Court had pronounced that promotions on ethnic ratios contravened Article 12(1) and (2)).

Thereafter Circular No. 4005/91 dated 5.9.91 was issued calling for applications for promotion to Grade III, Class 2 from officers who had completed one year of service after confirmation in Grade III, Class 3. While the 29 officers who had been promoted on the ethnic ratio could have satisfied this condition, the petitioners were not qualified.

Held :

The petitioners had ceased to be in the same class as the 29 promoted employees. Differentiation by reference to the classes to which the employees belonged and service therein is neither irrational nor unintelligible. There is no violation of Article 12(1).

Case referred to :

1. *Ramupillai v. Minister of Public Administration*, [1991] 1 Sri LR II.

APPLICATION for relief for infringement of fundamental rights on the ground of discrimination.

R. K. W. Goonesekera with Lakshman Perera and J. C. Weliamuna for petitioners.

A. S. M. Perera, D.C.G. for respondents.

Cur. adv. vult.

April 01, 1993.

FERNANDO, J.

In 1988 the two Petitioners were employees of the 1st Respondent in the Clerical Grade. By Staff Circular No. 216/88, applications were invited, from employees in the Clerical and Stenographers Grade, for promotions for 228 vacancies in Grade III class 3 (which were Staff Grade posts) ; of these vacancies, 30% (68) were to be filled on seniority, and the balance 70% (160) on merit, on the results of a written job test or competitive examination. On 22.5.88 that written examination was held, and the results were released on 31.1.89 ; letters of appointment dated 23.2.90 were issued to the first 160 in order of merit, according to the marks obtained ; these promotions were effective from 22.5.88, and are not in any way questioned by the Petitioners.

Public Administration Circular No. 15/90 dated 9.3.90 was then issued, providing for promotions on ethnic ratios ; on that basis letters of appointment dated 21.5.90 were issued to 29 others (17 Tamil and 12 Muslim employees), making supernumerary appointments; had additional or supernumerary appointments been made on the basis of merit alone, as disclosed by the marks obtained, another 466 employees (including the two Petitioners) should also have been promoted. However these 29 promotions were not challenged by the Petitioners or anyone else, either immediately or in early 1991 after the decision in *Ramupillai v. Minister of Public Administration* ⁽¹⁾, (which held that promotions on ethnic ratios were contrary to Article 12 (1) and (2). The Petitioners do not claim that they should now be promoted to Grade III class 3.

Thereafter by the 1st Respondent's Circular No. 4005/91 dated 5.9.91 applications were called, from officers in Grade III class 3, for promotions for 280 vacancies in Grade III class 2 ; of these vacancies, 30% (84) were to be filled on seniority, and the balance 70% (196) on merit, on the results of a written competitive examination. In respect of the latter category, various alternative qualifications were prescribed, but one essential condition was that candidates should have completed one year of service after confirmation in Grade III class 3. Obviously, the Petitioners and the rest of the aforesaid 466 employees did not satisfy, and could not have satisfied, that condition.

The Petitioners then made this application under Article 126 on 4.10.91 ; their case is that the 29 employees promoted to Grade III class 3, on ethnic ratios in accordance with the invalid Public Administration Circular, constituted one class together with the aforesaid 466 employees who should have been treated equally and promoted at the same time ; that the 1st Respondent should have, administratively, treated them as belonging to one class, although no application had been made under Article 126 for a judicial decision to that effect ; that consequently their lack of one essential qualification was due to no lapse or default on their part ; that such ineligibility was the result of discrimination in violation of Article 12(1) ; and that their exclusion from the category of persons eligible to apply for promotion in terms of Circular No. 4005/91 was also in violation of Article 12(1). On that basis, the Petitioners prayed for a declaration, and for an order directing the 1st Respondent to consider the Petitioners as being eligible for promotion to Grade III class 2.

After this matter was argued on 9.9.92, it was referred to the Commissioner for the Elimination of Discrimination and Monitoring of Human Rights, for mediation and conciliation, but the parties were unable to arrive at a settlement. It seems to me that the 1st Respondent ought to have taken whatever action was possible to remedy the injustices caused by the unconstitutional promotion of 29 employees by reference to ethnic quotas. However, the Petitioners themselves did not have recourse to their legal remedy to vindicate their fundamental right. Consequently, the factual position now is that since May 1990 the Petitioners (and the rest of the aforesaid 466 employees) had ceased to be in the same class as these 29 employees.

Thus, when Circular No. 4005/91 was issued more than one year later, there were two distinct classes, and not one class. The 29 employees in Grade III class 3 probably had by then one year of confirmed service in Grade III class 3, while the Petitioners did not. Differentiation by reference to the classes to which they belonged, and service therein, was neither irrational nor unintelligible. There has been no violation of Article 12 (1).

The Petitioners' application has therefore to be dismissed, but, in all the circumstances, without costs.

RAMANATHAN, J. – I agree.

PERERA, J. – I agree.

Application dismissed.